

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

JIM BILLADO ROOFING, LLC,	:	
	:	
Plaintiff,	:	
	:	
v.	:	File No. 1:08-CV-97
	:	
CUSTOM COPPER & SLATE, LTD,	:	
	:	
Defendant.	:	

RULING ON DEFENDANT'S MOTION FOR EXTENSION OF TIME
TO FILE APPEAL AND OPPOSITION RE: ATTORNEY FEES
(Paper 93)

Defendant Custom Copper & Slate moves for two different extensions of time. Paper 93. First, Custom Copper asks to extend the deadline for filing an opposition to Plaintiff Jim Billado Roofing's motion for costs, expenses, attorney fees and prejudgment interests until February 5, 2010. As Jim Billado Roofing concurs in this request, see Paper 94, the extension is GRANTED.

Second, Custom Copper asks to extend the deadline for filing a notice of appeal, from January 13, 2010 to February 15, 2010. Jim Billado Roofing opposes this request. Paper 94. A motion to enlarge the time to file a notice of appeal requires "excusable neglect or good cause." Fed. R. App. P. 4(a)(5)(A)(ii). The primary factor in deciding "excusable neglect" is "the reason for the delay, including whether it was within the reasonable control of the movant." Silivanch v. Celebrity Cruises, Inc., 333 F.3d

355, 366 (2d Cir. 2003). "The Second Circuit Court of Appeals and other courts have strictly limited what attorney error could be considered excusable neglect." In re Johns-Manville Corp., No. 04 Civ. 8001, 2006 WL 1676392, at *2 (S.D.N.Y. June 14, 2006) (unreported).

Here, the only reason for the delay offered by Custom Copper is the need "to retain appellate counsel." Paper 93 at 1. Custom Copper fails to explain why this could not have been accomplished in the past month, or why this prevents the filing of a simple notice of appeal. The Court finds no "excusable neglect" within the meaning of Fed. R. App. 4(a)(5). See Silivanch, 333 F. 3d at 365; Sussman v. U.S. Dept. of Justice, No. CV-03-3618, 2009 WL 3838262, Slip Op. at 2-3 (E.D.N.Y. Nov. 16, 2009) (rejecting motion to extend time where moving party failed to explain the delay); In re Johns-Manville Corp., 2006 WL 1676392, at *2 (collecting cases). Accordingly, the extension of time to file a notice of appeal is DENIED.

Dated at Brattleboro, in the District of Vermont, this 14th day of January, 2010.

/s/ J. Garvan Murtha
Honorable J. Garvan Murtha
Senior United States District Judge